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Section II below analyzes Article IX of the Soviet proposal, which relates directly to verification. Section III covers those provisions of Article X (describing the duties of the proposed "Standing Consultative Commission") which have verification implications.

II. Analysis of Article IX

The Definition of National Means of Verification (Paragraph 1)

The Soviet 19 March proposal states that each contracting party "shall use the national technical means at its disposal; employment of these means shall not violate the sovereignty of the other party or the generally recognized norms of international law." The U.S. proposal of 4 August defines national collection means as "technical information-collection systems necessary for verifying compliance with the agreement and operating outside the national territory of the other state."

The Soviet clause beginning "employment of these means" is ambiguous. The intended meaning may be the one voiced by Minister Semenov in the 19 November 1970 plenary, when he said, "These means should be used in such a way that the sovereignty of the other side and the generally recognized norms of international law not be violated." At the next plenary on 24 November, Ambassador Smith cited the U.S. definition contained in the 4 August proposal, and noted that "we believe that there is no substantive difference between our definition and your description." It should also be noted, however, that yet a third Soviet version appeared in the 4 December "Basic Provisions," which states in paragraph six: "For the purpose of providing assurance of compliance with the provisions of the agreement, each side shall use the national technical means of verification at its disposal without violating the sovereignty of the other side and the generally recognized norms of international law."

One issue here relates to the question of whether or not, under the Soviet proposal, collection assets located in a third country can legitimately be classed as "national" means. The definition in the U.S. proposals at SALT II was phrased in such a way as to handle this problem. It was designed to cover the question Minister Semenov asked at the plenary session of 26 June 1970; "In connection with the definition of national means of verification advanced by the American side, we would like to obtain clarification whether the American approach provides for the possibility of placing some kind of means of verification on the territory of third countries and whether means of this kind would be considered national means of verification." The U.S. responded to this Soviet request for clarification by reiterating our definition in the proposal of 4 August. The Soviets have not raised this issue since, but it could surface again at any time.

It appears prudent to modify the language in the Soviet proposal to cover the third country aspect for two reasons: (1) the current phraseology is sufficiently vague that it would permit a unilateral determination by the Soviets that collection sites based on third country territory were contrary to the undefined tenets of international law; and (2) the Soviets could state that third country sites were not included in the "noninterference" clause (paragraph 2) of Article IX, which is discussed later in this paper.

Another issue is the possibility that satellite reconnaissance systems could be in jeopardy if the Soviets chose to view their use as contrary to "the generally recognized norms of international law." This eventuality appears less likely to surface than the third country problem. Minister Semenov at the 23 June 1970 plenary stated: "Obviously the use of national means of verification, which may include space systems, for example, is sufficient to insure the necessary confidence

in the implementation of an eventual agreement." This sentence implies Soviet acceptance of space systems as not violating sovereignty or conflicting with international law, but it is not as explicit as the situation warrants.

There appear to be compelling reasons, however, not to specifically refer to space systems in defining allowed national means. First, it is generally considered to be against U.S. policy interests to discuss or acknowledge openly such systems. Moreover, there is no acknowledged international understanding on space surveillance. This may be the reason why the Soviets have chosen to leave it out of their definition. Also, raising the issue of one collection system might lead to consideration of other types (e.g., third country participation) and unnecessarily complicate the issue.

Recommendations:

(1) That no attempt be made to refer to space systems specifically in the formal agreement; it would be advisable, however, to arrange with the Soviets to recognize the legitimacy of space systems in a plenary statement.

(2) That the phraseology of any proposed agreement take account of both the U.S. and Soviet wording as follows:

"For the purpose of providing assurance of compliance with the provisions of this treaty, each contracting party shall use national technical means of verification, defined as technical information-collection systems which operate outside the national territory of the other state. These means shall be used in such a way that the sovereignty of the other state and the generally recognized norms of international law not be violated."

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Noninterference with National Means (paragraphs 2 and 3)

Paragraph 2 picks up from the U.S. 20 April and 4 August proposals (and the Soviet 19 November 1970 plenary statement) a provision not to interfere with the national technical means of verification of the other side "operating in accordance with paragraph (1) of this article." The link between the definition of national means and the noninterference clause is obvious and underlines the necessity to modify and expand paragraph 1.

Paragraph 3 also draws on provisions of the U.S. 20 April and 4 August proposals, in this case undertaking not to use special concealment measures which impede verification by national means. Again the Soviets had confirmed their willingness to agree to such a provision on 19 November. In the current draft, however, the words "for ABM systems" is included, limiting the application of this provision whereas the U.S. proposals were applicable to all systems covered in an agreement. Also included in the Soviet paragraph is a sentence excluding current construction, assembly and overhaul practices from the obligation not to use special concealment measures.

The exemption of current construction, assembly and overhaul practices from provisions concerning noninterference was also broached before by Minister Semenov at the 19 November 1970 plenary. It differs from the U.S. 4 August proposal, but is consistent with the broader interpretation the U.S. introduced in reply to Minister Semenov's 19 November statement, when, on 25 November, Ambassador Smith said: "As to the concealment aspects of this issue (i.e., noninterference), we consider it self-evident that new measures, deviating from current practices and having the effect of denying the collection of information by national technical systems needed to verify compliance with an agreement, would be inconsistent with such

an agreement. On the other hand, we do not seek to require either side to change current practices which do not involve deliberate concealment."

It appears that the Soviet and U.S. positions are essentially in agreement. Some word changes, however, would clarify the Soviet statement, particularly in regard to exempting current practices. Also, by deleting the reference to ABM systems, we could create a general statement that could cover all SALT contingencies and lay to rest the possibility that the Soviets might visualize the anti-concealment clause as applicable only to certain issues.

Recommendations:

1. That the Soviet wording in paragraph 2 of their ABM proposal be accepted only in the event that paragraph 1 be modified as recommended earlier in this paper.

2. That the wording of paragraph 3 be amended to read as follows:
"The contracting parties undertake not to use special concealment measures which impede verification of the terms of this agreement by national means. This prohibition shall not require changes in construction, assembly or overhaul practices currently in use by the U.S. or USSR."

III. Analysis of Verification-Related Provisions of Article X

Duties of a Standing Consultative Commission

Paragraphs 1a), 1b) and 1c) of Article X are related to the verification issue. They state that the Commission will:

"a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous.

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"b) provide on a voluntary basis such information as the contracting parties consider necessary to assure compliance with the obligations assumed.

"c) consider questions involving unintended interference with national means of verification."

The phraseology contained in paragraph 1a) of the Soviet proposal has been basically unchanged since it was introduced in their 20 April 1970 "Basic Provisions." Paragraph 1b), providing for the voluntary exchange of information, was introduced in Minister Semenov's 19 November plenary statement, apparently in answer to U.S. proposals (20 April and 4 August) calling for selective direct observation and advance notification of certain deployments (the 20 April provision spoke only of "timely" notifications). NSDM 102 addresses the circumstances under which the U.S. may back off its position on these two issues and for that reason they are not discussed further in this paper.

Paragraph 1c), concerning "questions involving unintended interference with national means," is unusual in that it is an entirely new provision. Neither is it drawn from previously-introduced U.S. language. At first blush it appears to be straightforward. On further reflection, however, it makes one wonder whether the Soviets, in singling out this one aspect of verification for special attention, have some special circumstance in mind which is of sufficient import to warrant treatment in a special provision.

Recommendation: That we attempt to smoke out the Soviets' motives in this matter by asking for clarification in a plenary session and probing further at post-plenary discussions.

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